

REMARKS **BEST AVAILABLE COPY**

Applicants previously presented claims 1-12 and 21-26 for examination. In the Office Action, the Examiner has rejected all of the claims.

Applicants appreciate the comments in the Office Action. However, for the reasons to be stated below, Applicants respectfully traverse the rejections.

By this response, Applicants have cancelled claim 12. Accordingly claims 1-11 and 21-26 remain pending. Applicants respectfully request that the Examiner reconsider the application in light of the amendments and the remarks expressed herein. Applicants believe that no additional fees are required for the application.

Claim objections

Claim 12 was objected to. Following the suggestions in the Office Action, Applicants have cancelled the claim.

Claim Rejections

Claims 1-12 and 21-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (USPN 6,741,995, hereinafter "Chen"), in view of Dietrich et al (USPN 6,526,392, hereinafter "Dietrich") in further view of Crici et al (US 2005/0027580, hereinafter "Crici"). Applicants respectfully disagree.

Chen pertains to methods for creating a customer profile by analyzing relationships in databases. For example, to know how much profit each customer is contributing to the bank's bottom line, a bank segments its customers based upon their contributions or other attributes.

The Office Action argued that Chen teaches the range of customer point values associated with selected customer groups being adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution. Applicants respectfully disagree. The only support provided in the Office Action is in Chen's "segmenting of customers into one or more groups, based upon customer profiles,

wherein the customer profiles are analyzed by a product planner to determine whether to enter or divest a line of business.”¹

It is difficult to understand how Chen’s general description on segmenting customers reads on Applicants’ specific approach of adjusting the range of customer point values to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution. Applicants respectfully request the Examiner designate the particular part(s) in Chen being relied on to support the rejections, as required under 37 CFR 1.104(C)(2).

Then the Office Action acknowledged that “Chen et al does not disclose determining an actual capacity allocation distribution among the plurality of customer groups”² and does not disclose “the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values”³, which Applicants agree.

To remedy the deficiencies, the Office Action introduced Dietrich.

Dietrich pertains to setting a price for a service contract. Dietrich reads data associated with the service, analyzes the data to create customer profiles, evaluates the incremental cost of adding a new customer to a service network, and determines a price range for the service contract.

First, Dietrich does not teach or suggest adjusting a range of customer point values associated with customer groups to cause an actual distribution to converge to a target distribution. Such processes are different from evaluating incremental cost and resource allocation of adding new customer to determine the correct price range.

Second, it is not clear where Dietrich has taught or suggested determining an actual capacity allocation distribution among the plurality of customer groups. The Office Action has not designated the particular parts in Dietrich to support its assertions.

Third, as to the argument that Dietrich teaches “at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values,” the Office Action cited column 7, lines 7-24 of Dietrich. However, in that area, Dietrich describes a set of

¹ The last 7 lines on page 3 of the Office Action.

² The first sentence on page 4 of the Office Action.

³ The 3rd to the 5th line on page 4 of the Office Action.

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information used to form the customer shipping profile (block 20), for example, the customer's nominal daily shipments, pieces per shipment, and distribution of shipments by weight, by day of week and by month. It is not clear how Dietrich's customer shipping profile in any way teaches or suggests availability of delivery windows to be selected, let alone having the availability dependent on (a) the customer group to which the customer is assigned and (b) the adjusted range of customer point values. Again, Applicants respectfully request the Examiner designate the particular part(s) in Dietrich being relied on to support the rejections.

Then, the Office Action acknowledged that neither "Chen et al nor Dietrich et al disclose wherein a delivery interface with a plurality of delivery windows is generated to allow a specific customer to select at least one of the windows for delivering an order to the specific customer"⁴, which Applicants agree.

To remedy the deficiency, the Office Action introduced Crici.

In general, Crici pertains to providing service receivers with remote appointment scheduling capabilities utilizing the Internet. As support in Crici, the Office Action relied on "a service receiver (i.e., specific customer) accessing the schedule of a service provider in order to determine which days and times are available to make the appointment (§ 0017 and § 0023)"⁵; "the service provider [in Crici] can view and change their appointment schedules based upon resources (§ 0016)"⁶; and "the service receiver provided with their own customized screen display (i.e., based upon customer designation, § 0019)"⁷. Applicants respectfully disagree that Crici can overcome the serious deficiencies of Chen or Dietrich noted above.

First, Crici is not an analogous art to Applicants' claimed invention. For example, Crici is not even in the areas of, nor has Crici taught or suggested, having a delivery interface with delivery windows generated to allow a customer to select a window for delivering an order to the customer.

⁴ The last paragraph on page 4 of the Office Action.

⁵ The last paragraph on page 4 of the Office Action.

⁶ The middle sentence of the 2nd paragraph on page 9 of the Office Action.

⁷ The third line of the 1st paragraph on page 10 of the Office Action.

Second, Crici again does not teach or suggest having the range of customer point values associated with the customer groups adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution.

Finally, though Crici might have allowed service receivers to access the schedule of a service provider, whether the provider is available for appointment is not determined by assigning the receiver to a customer group, or "after the range of customer point values associated with the customer groups having been adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution."

Then the Office Action asserted that "Dietrich et al discloses suitable shipping profile presented to the customer (column 7, lines 7-24), while Chen et al disclose including a plurality of expressions for segmenting customers (column 4, lines 37-41), therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjusting the range of customer point values associated with selected customer groups, wherein a delivery interface with a plurality of delivery windows is generated to allow a specific customer to select at least one of the windows for delivering an order to the specific customer, wherein the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values in Chen et al, as seen in Dietrich et al and Crici et al, respectively, thus effectively determining the delivery availability for a customer based upon customer profile, making Chen et al more robust."⁸ Applicants respectfully disagree.

In an attempt to try to understand the arguments in the Office Action quoted in the above paragraph, Applicants parse the above paragraph into its separate parts:

Because

(A) Dietrich discloses customer shipping profile (column 7, lines 7-24) and

(B) Chen discloses customer segmentation (column 4, lines 37-41),

Therefore the following (I-IV) become obvious:

(I) Adjusting the range of customer point values associated with selected customer groups,

(II) A delivery interface with a plurality of delivery windows is generated,

⁸ The first paragraph on page 5 of the Office Action.

(III) The windows allow a specific customer to select at least one of the windows for delivering an order to the specific customer, and

(IV) At least one window available to be selected depends on (i) the customer group to which the specific customer is assigned and (ii) the adjusted range of customer point values.

Since (I-IV) are obvious,

The delivery availability for a customer based upon customer profile is effectively determined, making Chen et al more robust.

Based on the Office Action's assertions in the above paragraph, the Office Action at least has acknowledged that none of the references specifically teaches (I-IV). To establish that the cited references have suggested (I-IV), the Office Action argues that (I-IV) are obvious. They are obvious because of (A-B), so as to make "Chen et al more robust." However, there are numerous ways to make Chen more robust.

While it may be permissible in some cases to modify the prior art references in the examination of Applicants' applications, such modifications are not allowed if they are prompted by Applicants' disclosure, rather than by a reasoned analysis of the prior art and by suggestions provided therein.

A rejection is not allowed to use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate Applicants' claimed invention. In this particular situation, the prior art references do not even have many of the isolated disclosures. For example, Chen, Dietrich and Crici do not teach or suggest (a) a delivery interface with a plurality of delivery windows is generated to allow a specific customer to select at least one of the windows for delivering an order to the specific customer, (b) the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values, and (c) the range of customer point values associated with selected customer groups is adjusted to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution.

Not only are there no teachings, suggestions or motivations to combine Chen, Dietrich and Crici in the manner proposed in the Office Action, numerous limitations in the claimed invention are nowhere to be found in the references.

Thus, it is submitted that Chen, Dietrich and Crici do not teach or suggest independent claim 1, singly or in any combination, and likewise its dependent claims 2-11 and 21-25 for at least the reasons noted above. Also, similar arguments are applicable to independent claim 26, and would not be repeated.

Additional limitations recited in the independent claims 1 and 26, or dependent claims of claim 1 are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from Chen, Dietrich and/or Crici. Thus, it is respectfully requested that the Examiner withdraw the rejections of claims 1-11 and 21-26 under 35 U.S.C. 103(a).

Regarding the remaining references cited by the Examiner, since they have not been applied against any of the claims and do not appear properly applicable thereto, no further mention thereof will be made.

It is submitted that claims 1-11 and 21-26 are patentably distinct from the cited references. Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

In the event that the Examiner, upon reconsideration, determines that an action other than an allowance is appropriate, the Examiner is requested and authorized to telephone Applicants' representative prior to taking such action, if the Examiner feels that such a telephone call will advance the prosecution of the present application.

Respectfully submitted,

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